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Rep. William Crawford
Rep. Susan Crosby
Rep. John Day
Rep. Craig Fry
Rep. Brian Hasler
Rep. Win Moses
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Sen. Teresa Lubbers
Sen. Morris Mills
Sen. Marvin Riegsecker
Sen. Richard Worman
Sen. Joseph Zakas
Sen. Glenn Howard
Sen. Earline Rogers
Sen. Vi Simpson
Sen. Mark Blade



HEALTH FINANCE COMMISSION

Legislative Services Agency
200 West Washington Street, Suite 301
Indianapolis, Indiana 46204-2789
Tel: (317) 232-9588 Fax: (317) 232-2554

LSA Staff:

Barry Brumer, Attorney for the Commission
Al Gossard, Fiscal Analyst for the Commission

Authority: IC 2-5-23

MEETING MINUTES

Meeting Date: June 17, 1998
Meeting Time: 1:00 P.M.
Meeting Place: State House, 200 W. Washington St.,
Room 404
Meeting City: Indianapolis, Indiana
Meeting Number: 1

Members Present: Rep. Charlie Brown, Chairperson; Rep. Win Moses; Rep. Brian Hasler; Rep. Susan Crosby; Rep. John Day; Rep. Rolland Webber; Rep. Vaneta Becker; Rep. Timothy Brown; Rep. Mary Kay Budak; Rep. Robert Behning; Rep. David Frizzell; Rep. Gloria Goeglein; Sen. Steven Johnson; Sen. Teresa Lubbers; Sen. Morris Mills; Sen. Beverly Gard; Sen. Richard Worman; Sen. Glenn Howard; Sen. Vi Simpson; Sen. Earline Rogers.

Members Absent: Sen. Marvin Riegsecker; Sen. Joseph Zakas; Sen. Mark Blade; Rep. William Crawford; Rep. Craig Fry; Rep. Nick Gulling.

Rep. Charlie Brown called the meeting to order at 1:10 P.M. Commission members introduced themselves, then Rep. Brown reported the charges from the Legislative Council to the Commission.¹ Staff then described the Commission's activity to date regarding the topic of assisted living.

¹ The charges, provided in Legislative Council Resolution 2-98, include the following:

- A. Evaluate the certificate of need program. (HCR 6)
- B. Evaluate the need for oversight of nonprofit hospital sales or mergers. (HCR 37 and SCR 37)
- C. Study all aspects of managed care, with particular attention paid to data collection and grievance procedures. (SB 14)
- D. Study the benefits of an expanded children's health insurance program.

Assisted Living

Nancy Griffin, Executive Director of the Indianapolis Resource Center for Independent Living, briefly discussed the importance of consumer disclosure in the context of the growth of assisted living.

Jim Leich, President of the Indiana Association of Homes & Services for the Aging (IAHSA), told Commission members that many IAHSA members have been providing assisted living for many decades.² Given this history, the IAHSA board has taken a very proactive stance to state oversight of this level of care. Mr. Leich suggested that, given the broad range of services provided by facilities, the term "housing with services" is more descriptive than "assisted living". Housing with services represents a new paradigm for service delivery. Based on its own research, IAHSA concluded that in order for this long term care paradigm to flourish, a flexible, consumer-driven model based on the concepts of consumer choice, autonomy, and independence must be developed. This led to the development and passage of SEA 436 during the past legislative session. Mr. Leich provided Commission members with a brief overview of that legislation, noting that it included a provision requiring the Commission to review the process of resolving disputes between residents and housing with services establishments and make recommendations regarding a mediation process to the Legislative Council by January 1, 1999. Mr. Leich suggested that all interested parties would benefit from an independent, informal mediation process.

John Cardwell, Legislative Director, Citizens Action Coalition, told Commission members that consumer groups want the Division of Disability, Aging, and Rehabilitative Services (DDARS) to contract with a private, not for profit organization with expertise to administer dispute resolution between residents and housing with services establishments. The process should be simple for a resident to initiate. Mr. Cardwell explained the Farm Counseling Project, offering that as a model on which to base this dispute resolution program. He noted that it will take time before anyone is certain about the level of need for a formal dispute resolution program, and emphasized the desire of consumer groups to work with DDARS to explore various dispute resolution options.

In response to questions from Sen. Johnson, Rep. Charlie Brown, Rep. Goeglein, Sen. Simpson, and Sen. Mills, Mr. Cardwell: (1) agreed that consumer groups are trying to head off a potential problem and to set up a process ahead of time; (2) noted that SEA 436-1998 requires all housing with services establishments to provide a contract to each resident and that potential residents should know up front about the availability of the contract; (3) agreed to report back to the Commission this fall or next spring regarding this topic; (4) reported that the Farm Counseling Program has an annual budget of approximately \$300,000, but that the budget for this program would be much smaller; and (5) it would be best to work with DDARS to determine how often dispute resolution would be needed.

² A copy of Mr. Leich's testimony is on file in the Legislative Information Center, Room 230, Statehouse, Indianapolis, Indiana. The telephone number of the Legislative Information Center is (317) 232-9856, and the mailing address is 200 W. Washington St., Suite 301, Indianapolis, Indiana 46204-2789.

Paul Severance, Executive Director of United Senior Action, seconded Mr. Cardwell's recommendations and stressed the importance of proceeding with the development of a dispute resolution program.

Faith Laird, Vice President of Regulatory Affairs for the Indiana Health Care Association (IHCA), explained that she also represents The Indiana Center for Assisted Living (INCAL), a new arm of IHCA developed to respond to the growing need of assisted living providers for information, education, and representation and advocacy. She provided Commission members with a copy of the first edition of *The INCAL Insider*.³ Ms. Laird thanked Commission members for their work to date on assisted living issues. She noted that the term "assisted living" has yet to be defined or regulated by the Federal government. She expressed concern that increasing the level of state regulations on assisted living will also increase the costs associated with providing those services. Ms. Laird asserted that, with the passage of SEA 436-1998, consumers will have the comparative data they need to assist them in making informed choices when selecting an assisted living environment. She suggested that language in SEA 436 be amended so that the description of an establishment's complaint resolution process include a process for resolving disputes between residents and housing with services establishments. Lastly, Ms. Laird proposed giving the disclosure document process time to be tested, as it is much easier to add regulation when public policy demands action by the General Assembly than it is to delete regulations that prove to be burdensome.

In response to a question from Rep. Day, Ms. Laird noted that the time frame between when a complaint by a nursing home resident is filed and when the complaint is heard ranges from 24 to 48 hours for very serious (life threatening) situations to 30 to 60 days for less serious complaints. Sen. Johnson proposed that any discussions regarding the development of a dispute resolution program should include for profit facilities.

Blake Jackson, Vice President of Senior Services for Turtle Creek Management, Inc., told Commission members about Turtle Creek's "Care and Concern" Program.⁴ This is a program used by Turtle Creek facilities to proactively identify and address the concerns of customers and their families before these concerns rise to the level of an issue or dispute. Turtle Creek established the program in order to keep their customers and the customers' families satisfied because of the many other options available in long term care. Mr. Jackson then expressed caution that, by setting up a mediation program at the state level, minor concerns could be elevated into disputes that create adversarial relationships and take much more time to resolve. He also indicated that a formal mediation program would undoubtedly add to the cost of each resident's care, thus negating the ability of customers on a fixed income to afford to choose their living arrangements. Given the lack of evidence of a problem at this time that would indicate the need for a formal dispute resolution program, Mr. Jackson urged Commission members to take at least a year to determine if such problems exist and if so, the nature of the problems.

³ A copy of Ms. Laird's testimony and a copy of *The INCAL Insider* are available at the Legislative Information Center. See footnote 2.

⁴ A copy of Mr. Jackson's testimony is available at the Legislative Information Center. See footnote 2.

In response to questions and comments from Sen. Lubbers, Sen. Mills, Rep. Webber, Rep. Becker, Sen. Rogers, Rep. Charlie Brown, Rep. Frizzell, Sen. Howard, Rep. Day, and Sen. Johnson, Mr. Jackson: (1) noted that there are approximately 30-40 assisted living facilities in the Indianapolis area; (2) emphasized that the Commission should take time to determine if problems exist that would indicate the need for a formal dispute resolution program; (3) observed most concerns under Turtle Creek's "Care and Concern" Program are generally resolved within one week; (4) revealed that Turtle Creek does not currently operate any facilities in northern Indiana, and that he does not know if other assisted living facilities use a program similar to the "Care and Concern" Program; (5) stressed that the markets where Turtle Creek facilities are located are very competitive, so unsatisfied customers can merely move to a nearby facility for care; (6) estimated that 10% to 20% of Turtle Creek customers came from facilities not operated by Turtle Creek; (7) estimated that each facility receives 2 to 3 concerns each week; (8) agreed that most current assisted living facilities are priced out of range for many people, but noted that Turtle Creek is developing a community in Indianapolis that will target individuals with fewer financial resources than Turtle Creek's current facilities; (9) emphasized that there is no role for the state in remedying concerns between customers and private facilities at this time; (10) observed that costs would rise whether dispute resolution is conducted on a local, rather than state, level; (11) noted that approximately 50 customers have left Turtle Creek facilities since January 1998, of which approximately 2 received questionable care; and (12) agreed that residents know when they will have to move to nursing homes.

After some discussion, Rep. Charlie Brown announced that the Commission will meet regarding the Children's Health Insurance Program on Tuesday, August 11th at 10:00 A.M. The Commission will also meet on July 15th to evaluate the need for oversight of nonprofit hospital sales or mergers.⁵

Long Term Care Ombudsman Program

Robyn Grant, former State Ombudsman, told Commission members about the concerns she had that caused her to leave that position after nearly 8 years.⁶ She provided Commission members with background on the Long Term Care Ombudsman Program and explained the federal law that established the program in each state. She also explained the structure of Indiana's ombudsman program, noting that the ratio of ombudsmen to nursing home beds in Indiana is 1:6000, while the national recommendation is 1:2000. Ms. Grant asserted that Indiana's ombudsman program does not fulfill its goals, primarily because of administrative and bureaucratic obstacles. She outlined three concerns: (1) The program does not have independence to advocate on

⁵ This meeting has been rescheduled for September 22nd.

⁶ A copy of Ms. Grant's testimony is available from the Legislative Information Center. In addition, Ms. Grant distributed to Commission members the following materials: (1) The Executive Summary of the Report of The Long-Term Care Ombudsman Program Workgroup; (2) The Report of The Long-Term Care Ombudsman Program Workgroup; (3) A comparison of four long-term care ombudsman programs; (4) A summary from the Institute of Medicine entitled "Real People Real Problems: An Evaluation of the Long-Term Care Ombudsman Programs of the Older Americans Act"; and (5) A copy of the federal legislation establishing ombudsman programs. These materials are also available from the Legislative Information Center. See footnote 2.

behalf of those the program is supposed to serve. (2) There are conflicts of interest in the program that harm its effectiveness. (3) There is a lack of internal consistency, because the state ombudsman program has little control over local ombudsmen. In response to Sen. Worman's question, Ms. Grant emphasized that the state ombudsman program should be independent of other state agencies.

Debbie Wilson, Director, Division of Disability, Aging, and Rehabilitative Services (DDARS), briefly responded to Ms. Grant's concerns. She noted that ombudsmen should not be silenced, that certain conflicts of interest are present, and that DDARS does have some problems regarding lack of internal consistency. She explained that there are a number of entities besides the ombudsman program that look out for the interests of nursing home residents. She also emphasized that DDARS suggested the formation of the working group that generated many of the suggestions for improvement in the ombudsman program that Ms. Grant spoke about. Ms. Wilson stated that DDARS should fully digest the working group's recommendations, then should approach the administration with suggestions for change. She stressed that DDARS offers a spirit of cooperation with the working group, and that she would not offer a point-by-point rebuttal to Ms. Grant's testimony because all parties agree on the need to protect consumers' rights.

In response to questions and comments by Rep. Charlie Brown, Sen. Mills, Rep. Webber, Sen. Gard, Sen. Johnson, Rep. Hasler, Rep. Budak, Rep. Goeglein, and Sen. Lubbers, Ms. Wilson: (1) noted that DDARS has records reflecting how often Ms. Grant spoke to others without prior approval and denied that Ms. Grant was "gagged" by DDARS; (2) engaged in a discussion with Commission members regarding conflicts of interest in the ombudsman program; (3) stated that most residents being moved from the New Castle Developmental Center are not being placed in assisted living facilities; (4) explained how the working group was formed and how DDARS will proceed during the time between submission of the working group's final report and providing suggestions for change in the ombudsman program to the General Assembly; (5) directed Commission members' attention to the six principles listed in the working group's final report, and noted that a benefit/cost analysis of the group's suggestions is not included in the report; (6) stated that DDARS will meet with the working group on July 14th, would allow 60-90 days for public meetings, and hopes to provide final recommendations regarding changes in the state ombudsman program to the General Assembly by December; (7) indicated that over 90% of the funding for the state ombudsman program is provided by the federal government; and (8) agreed to provide information to staff regarding how prescriptive the federal law is regarding responses by the state ombudsman program.

Rep. Charlie Brown invited long term care providers and related associations to provide position papers to the Commission regarding the state ombudsman program. After brief discussion, he adjourned the meeting at 3:45 P.M.